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10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,	)	Case No.: CR 23-169-1
)	
12	)	DEFENDANT MICHAEL BARZMAN'S
13 Plaintiff,	)	FILED THE ATTACHED RESPONSE
	)	TO DOCKET # 34 & 36;
14	)	MEMORANDUM OF POINTS AND
15 v.	)	AUTHORITIES
)	
16)	
17 MICHAEL BARZMAN,	)	Hearing Date: August 18, 2023
	)	Time: 10:00 a.m.
18	)	Department:
19 Defendant.)	
20 _____	)	Before the Honorable Maame Ewusi-
	)	Mensah Frimpong

21 TO THE HONORABLE MAAME EWUSI-MENSAH FRIMPONG, UNITED STATES
22 DISTRICT COURT JUDGE, AND ASSISTANT UNITED STATES ATTORNEYS
23 MATTHEW W. O'BRIEN, ALIX MCKENNA, AND MARK A. WILLIAMS:

24 PLEASE TAKE NOTICE that on the date and time set forth above, or as soon
25 thereafter as counsel may be heard, Defendant Michael Barzman, files the attached
26 response to Docket # 34 & 36 as requested by the Court. The defense concurs with the
27 government's position that third parties are not victims, requests that sentencing proceed
28

1 as previously scheduled and would request that the Court deny the request for an
2 evidentiary hearing.

3 This motion is based on this notice, the points, and authorities in support thereof,
4 all files and records and the letters of support filed in this case, and any further
5 information as may be presented regarding this motion. Mr. Barzman requests the
6 opportunity to supplement his motion should it become necessary.

7
8 DATED: August 16, 2023

Respectfully submitted,

9 _____
/s/

10 JOEL C. KOURY
11 Attorney for Defendant
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 26, 2023, Michael Barzman pled guilty to one count of making false
4 statements to the FBI (Dkt 24). Mr. Barzman crime was a product of multiple instances
5 of bad judgment following an acute period of financial desperation between 2010-2012,
6 when in fear of losing his health insurance and unable to pay the mountain of medical
7 bills he had accrued while battling cancer since he was twelve years old, he resorted to
8 making and selling fake paintings.

9 Mr. Barzman created all of these pieces and sold them in a parking lot, out of the
10 trunk of a car for a little over a \$1000 a piece. The purchasers paid cash for these
11 paintings. Later, the purchasers asked Mr. Barzman to supply them with documents
12 establishing fake provenance. When those documents were deemed insufficient, the
13 purchasers repeatedly asked Mr. Barman to fake more documents which is when Mr.
14 Barzman told them he would no longer cooperate. They also asked Mr. Barzman to
15 manufacture more pieces. Mr. Barzman refused and tried unsuccessfully to put the entire
16 incident behind him. The 2012 art production and sales were an aberrant event that Mr.
17 Barzman never repeated, although he did create his own work which he has created and
18 exhibited.¹

19 When confronted years in 2022, Mr. Barzman, embarrassed and ashamed, initially
20 lied to the investigators before being confronted with irrefutable evidence that led Mr.
21 Barzman to confess that he had lied. Ultimately, Mr. Barzman admitted making all of the
22 pieces and selling them at a fraction of what authentic pieces would sell for. Mr.
23 Barzman also took an oath under penalty of perjury, admitted to the factual basis and
24 entered a guilty plea before this Court to one count of 18 U.S.C. § 1001(a)(2).
25
26
27

28 ¹ In their pleading counsel says his 13 year old daughter could paint these pieces rather than Mr. Barzman who is talented artist who has exhibited works previously at art galleries.

II. PROCEDURAL HISTORY

The government filed an Information against Mr. Barzman on April 11, 2023, alleging one count of making false statements, in violation of 18 U.S.C. § 1001(a)(2). (Dkt 1). On the same date, the government filed the parties' Plea Agreement (Dkt 3), and Mr. Barzman later pled guilty to the single count on May 26, 2023 (Dkt 24). His sentencing is currently set for August 18, 2023 (*Id.*).

Following the guilty plea, a third party filed a pleading that was called a "victim statement of Basquiat Venice Investment Group." (Dkt. 33). That pleading is not requesting restitution but seemingly asking this Court to conduct a lengthy evidentiary hearing so that they can challenge Mr. Barzman's admission of guilt and get this Court's to make a determination that the paintings created by Mr. Barzman were instead created by Mr. Basquiat.

In response to this pleading the Court directed counsel (Dkt. 34 & 36.) to respond to the following three issues:

1. How the government notified any victims, assuming there are any.
2. The parties' position in regard to postponing the sentencing.
3. The parties' position in regard to conducting an evidentiary hearing.
- 4.

III. MR. BARZMAN'S POSITION IN REGARD TO THE CLAIMS OF THE THIRD PARTIES

A. **Mr. Barzman Has No Obligation To Notify Potential Victim's For a Violation of 18 USC 18 U.S.C. § 1001(a)(2). 1001(a)(2).**

Mr. Barzman concurs with the government that the intervening parties are not victims to a violation of 18 U.S.C. § 1001(a)(2). There is no legal obligation for a defendant to notify legitimate victims in a case. The defendant agrees with the government that the government had no obligation to notify these parties since they were not victims of the criminal conduct that Mr. Barzman was charged with in this case.

B. Mr. Barzman Is Requesting That His Sentencing Proceed As Currently Scheduled On August 18, 2023.

Mr. Barzman concurs with the Government that the sentencing take place on August 18, 2023. Following extensive investigation, the government and Mr. Barzman negotiated a disposition and are prepared for sentencing. This is a simple and straightforward case. Mr. Barzman lied to FBI. He subsequently confessed to lying and entered a guilty plea to that charge before this Court.

These third parties are taking the position that when Mr. Barman denied making the paintings, he was telling the truth. And when he admitted to the FBI and this Court that he previously lied to the FBI, he was lying by admitting to a crime that he did not commit. The third parties are asking this court to conduct an evidentiary hearing to set aside his guilty plea and find that Mr. Barzman actually told the truth to the FBI in 2022.

The problem with their request is that the third parties do not know the facts. The FBI conducted an extensive investigation and knew, beyond any reasonable doubt, that Mr. Barzman was lying when he said he did not create these pieces, when in fact he did create them. The FBI knows the truth, the United States Attorney's Office knows truth and Mr. Barman knows the truth. That is why Mr. Barzman admitted under oath that he committed the crime by lying to the FBI and why he is now requesting that he be sentenced for that crime.

C. There Is No Reason For This Court To Delay The Sentencing Or To Conduct An Evidentiary Hearing.

Mr. Barzman concurs with the Government that there is no purpose for this Court to conduct an evidentiary hearing. The parties briefing, while at times inconsistent and contradictory, seemingly is not asking for restitution but instead for a declaration that Mr. Basquiat painted items the FBI seized as part of a larger ongoing investigation. An evidentiary hearing is not appropriate considering it has nothing to do with Mr. Barzman's plea of lying to the FBI as charged in this case. They instead seeking to set aside Mr. Barzman's plea and get some sort of declatory relief inconsistent with the rules of Criminal procedure.

1 Nor is it consistent with the uncontroverted facts. When confronted by the FBI,
 2 Mr. Barzman admitted that he in fact had created these items and sold them under
 3 circumstances that any reasonable person would know were inauthentic.

4 But the parties continue to claim that they believed these items to be authentic,
 5 despite a mountain of evidence in their possession and later accumulated by the FBI that
 6 demonstrates that these investors knew these paintings were inauthentic. The Court
 7 should not waste valuable court time entertaining what the intervening parties hope to
 8 turn into a lengthy and complicated mini-trial with scores of conflicted and compromised
 9 experts and witnesses. When a party hopes to make a hundred million dollars, they have
 10 millions of reasons to find “experts” and “witnesses” to support their position. But none
 11 of their proffered testimony would establish that any of these items are authentic.

12 To the contrary, at an evidentiary hearing, Mr. Barzman would be able to get on
 13 the witness stand with cardboard and art supplies and create or duplicate any or all the
 14 prior pieces at the rate of two or three per hour. Mr. Barzman could easily replicate the
 15 pieces the intervenors described as some of the “finest” works since Mr. Barzman is the
 16 person that created those pieces initially.

17 But again, that is not the issue in this case. Mr. Barzman was charged and admitted
 18 to lying to the FBI in 2022 when he denied making these paintings ten years earlier. That
 19 denial was a false and that is the crime that Mr. Barzman is prepared to be sentenced for
 20 on August 18, 2023.

21 22 **IV. CONCLUSION**

23 For the foregoing reasons, Mr. Barzman respectfully request that this Court
 24 proceed with the sentencing and deny the request for an evidentiary hearing.

25 DATED: August 16, 2023

Respectfully submitted,

26 /s/

27 _____
 28 JOEL C. KOURY
 Attorney for Defendant